



**General Terms and Conditions**  
**for**  
**Letter of Credit Guarantee**

**March 14, 2014**

## 1 Definitions

For the purposes of these terms and conditions, the following expressions shall have the meanings set out below.

**adjustment:** reduction of compensation, in some cases to zero;

**confirmed letter of credit:** letter of credit for which both the guarantee holder and the issuing bank have undertaken payment responsibility;

**due date(s):** the date by which the guarantee holder under the letter of credit must have received payment from the bank issuing the letter of credit;

**EKN's share:** the percentage of risk relating to the bank issuing the confirmed or guaranteed letter of credit which is covered by this guarantee and specified in the guarantee commitment. See also guarantee holder's share;

**export agreement:** agreement relating to the export of goods or services;

**exporter:** the party exporting the goods or services for which a confirmed or guaranteed letter of credit serves as the method of payment;

**guarantee commitment:** the document whereby a guarantee is issued;

**guarantee holder:** the party that has received EKN's guarantee under these general terms and conditions;

**guarantee holder's share:** the percentage of risk relating to the bank issuing the confirmed or guaranteed letter of credit which is not covered by this guarantee. See also EKN's share;

**guaranteed letter of credit:** specific payment guarantee which is issued by the guarantee holder in its capacity as nominated bank, commonly referred to as a unilateral or silent confirmation;

**indemnification:** payment of compensation under the guarantee;

**interest:** current market interest rate for a particular currency, calculated according to STIBOR, LIBOR, EURIBOR or equivalent for one month, with the addition of one quarter (0.25) of a percentage point;

**letter of credit:** a letter of credit which is subject to the uniform rules of the International Chamber of Commerce (ICC) regarding letters of credit.

## **2 Scope of the guarantee**

- 2.1 These general terms and conditions relate to guarantees for confirmed and guaranteed letters of credit.

Statements in these general terms and conditions relating to confirmed letters of credit also apply to guaranteed letters of credit.

Subject to the limitation defined in section 2.2, the guarantee covers EKN's obligation to compensate the guarantee holder for the amount paid under the letter of credit, insofar as the issuing bank is liable for payment of the amount to the guarantee holder.

- 2.2 The guarantee covers EKN's share of loss suffered by the guarantee holder due to non-payment or partial non-payment of the amount paid under the letter of credit.

The scope of the guarantee in the above respect is defined in the guarantee commitment. The guarantee commitment specifies the amount covered by the confirmation.

The guarantee covers interest only when EKN indemnify amounts covered by the guarantee in accordance with the first paragraph.

Statements in these general terms and conditions relating to amounts covered by the confirmation also apply to interest on financed letter of credits. The guarantee commitment also specifies the interest amount covered by the guarantee if applicable.

The guarantee may be governed by special conditions in addition to or deviating from these general terms and conditions. If this is the case, this shall be stated in the guarantee commitment.

- 2.3 The guarantee does not cover losses arising from errors or negligence on the part of the guarantee holder.

The guarantee does not cover compensation for loss resulting from measures taken by Swedish authorities.

## **3 Conditions for validity of the guarantee**

- 3.1 The letter of credit must not contain provisions or any other wording which would restrict the guarantee holder's ability to fulfil his obligations under the guarantee commitment and these general terms and conditions.

- 3.2 No changes to the conditions for the confirmation or honouring of a confirmed letter of credit guarantee which involve risk to EKN may be made without EKN's written consent.

- 3.3 The guarantee holder may not, without EKN's written consent, wholly or partially waive any claim for compensation or claim in damages against the issuing bank, or

any surety or other security provided for payment of the issuing bank in connection with the confirmed letter of credit guarantee.

- 3.4 The guarantee may not be assigned to a third party without EKN's written consent.
- 3.5 If the guarantee holder has failed to observe the provisions of sections 3.1 – 3.4 and such failure has increased EKN's risk of loss, indemnification under the guarantee will be appropriately adjusted.

In cases where the guarantee holder has provided EKN with incorrect, incomplete or misleading information relevant to the issuance of the guarantee, and this has increased EKN's risk of loss, indemnification under the guarantee will be appropriately adjusted if the guarantee holder was aware or should have been aware that the information was incorrect, incomplete or misleading. If incorrect, incomplete or misleading information results in the guarantee being issued in a way which would not have occurred had the information been entered correctly, EKN shall be entitled to declare the guarantee either fully or partly non-binding, irrespective of whether EKN's risk of loss has increased or not.

- 3.6 The guarantee holder's share of the risk relating to the issuing bank may not be transferred to another party without EKN's written consent. If the guarantee holder acts in contravention of this provision, EKN shall be entitled to declare the guarantee non-binding.
- 3.7 If the premium defined for the guarantee is not paid by the prescribed date, EKN shall be entitled to declare the guarantee non-binding.
- 3.8 If EKN declares the guarantee non-binding in accordance with section 3.5 or 3.6, EKN shall refund part of the premium paid, following a deduction for administration costs.

Unless otherwise stated at the time of issuance of the guarantee, or after special permission from EKN, the guarantee holder is only entitled to a full or partial refund of the premium paid in the circumstances specified in this provision.

A decision from EKN regarding adjustment will not result in a refund of the premium paid.

- 3.9 If, after a guarantee has been issued, it is evident from a final court judgment that the guarantee-holder, or any other person acting on his instructions, has given a bribe or other improper benefit in conjunction with the export transaction to which the guarantee relates, then - regardless of whether or not the facts that have come to light have increased the risk of loss for EKN – EKN is entitled to declare all or part of the guarantee void as against EKN.

The guarantee-holder shall indemnify EKN for all costs and expenses occasioned by an event specified in the first paragraph. The guarantee-holder shall also repay to EKN any payments received, together with interest thereon from the time the payment was made.

## **4 Guarantee holder's obligations in the event of risk of loss**

- 4.1 If the guarantee holder not has been compensated for payments made under the letter of credit by the due date, this must be reported to EKN no later than 30 days after the due date.
- 4.2 If the guarantee holder has failed to notify EKN in accordance with 4.1, and such failure has increased EKN's risk of loss, the amount of indemnification which EKN would otherwise have been obliged to pay under the guarantee will be appropriately adjusted.

## **5 Indemnification**

### **5.1 General**

- 5.1.1 Claims for indemnification under the guarantee must be submitted in writing to EKN within one year of the due date. If a claim is not made within such period, the guarantee holder will forfeit the right to indemnification under the guarantee.

If the issuing bank has objected to its liability for payment under a particular letter of credit, the guarantee holder shall, unless there are clear grounds for not doing so, produce evidence, e.g. a Docdex decision that the presented document is a letter of credit or that the objections are not valid or other findings showing that the claim is unequivocal and overdue. Other evidence may include final judgements of a court, arbitration or other rulings acceptable to EKN.

- 5.1.2 Following the submission of a claim for indemnification by the guarantee holder under the guarantee, such claim shall be paid by EKN without delay together with interest from the due date of disbursement by the guarantee holder until the date on which payment is made by EKN.
- 5.1.3 From such time as indemnification is made, EKN shall be entitled to demand that the indemnified amount be assigned to EKN. In the event that EKN does not demand such assignment, but where the guarantee holder considers further possibilities of recovery to be futile, the guarantee holder shall be entitled to assign the claimed amount to EKN.

### **5.2 Calculation of loss**

- 5.2.1 The loss consists of the outstanding amount due for payment covered by the guarantee, less any counterclaim which the issuing bank may invoke against the guarantee holder.

Each amount which the guarantee holder receives from the issuing bank on and after the due date for disbursement under the letter of credit, but before indemnification is made, and which is not expressly appropriated for disbursement to a third party – or otherwise relates to such disbursement in accordance with what is clearly apparent from the circumstances – shall be used for compensation of the disbursement or payment of the guarantee holder's other claims against the issuing bank in due order following the due dates. If the due date under EKN's guaranteed letter of credit coincides with another due date from the issuing bank, monies received shall be divided on a percentage basis in relation to such amounts.

5.2.2 If disbursement under the letter of credit is to be made in Swedish kronor, indemnification shall also be in Swedish kronor. Where disbursement is to be made wholly or in part in a foreign currency, the guarantee commitment must state whether indemnification shall be effected in the foreign currency. In other cases, the indemnification will be determined by conversion of the currency in question to Swedish kronor, based on the average of the buying rates quoted for the foreign currency by two of the large Swedish foreign exchange banks at 11.00 a.m. in Stockholm on the due date. However, conversion will never involve application of a higher rate than the rate specified in the guarantee commitment.

### **5.3 Measures after settlement of claim**

5.3.1 The guarantee holder and EKN shall after indemnification together confer on reasonable measures for recovering an outstanding claim.

5.3.2 Any monies received after indemnification of the guarantee holder by EKN shall initially be used to cover EKN's and the guarantee holder's costs for collection of the amount and similar expenditure. The remaining amount will be divided between EKN and the guarantee holder in proportion to EKN's and the guarantee holder's shares.

The costs or expenditure associated with collection of the amount do not include the guarantee holder's or EKN's internal costs or expenses.

Interest shall be payable on any amount which shall vest in EKN in accordance with that which is stated in the first paragraph from the date on which the amount was received by the guarantee holder until such time as payment is made to EKN. Interest is based on the interest rate on the date on which the amount was received by the guarantee holder.

## **6 General obligations of the guarantee holder**

6.1 The guarantee holder is obliged to take the measures that may reasonably be deemed as incumbent upon him in order to prevent or limit loss.

Even after the loss has been indemnified, the guarantee holder shall be obliged to take such measures to collect compensation for the amount disbursed under the letter of credit, or to safeguard any other rights, as may be deemed reasonable.

6.2 With regard to a guaranteed claim, the guarantee holder is obliged to participate in any measures which may be required in order to implement a debt rescheduling agreement. The guarantee holder herewith authorises the Swedish government and/or EKN to conclude such an agreement. Such a debt rescheduling agreement does not diminish EKN's liability to make indemnification under the guarantee.

Authorisation to conclude such an agreement only covers EKN's share of the guaranteed claim. However, the guarantee holder may request this authorisation to be extended to cover the guarantee holder's share.

6.3 The guarantee holder is obliged to compensate EKN for costs and damages resulting from fraudulent or negligent behaviour on its part, or by its failure to

observe its obligations under the guarantee commitment and these general conditions.

However, the liability to pay compensation is limited to the amount the guarantee holder received in indemnification plus interest, with the exception of when the guarantee holder has acted in a fraudulent or negligent way.

## **7 Disputes regarding the guarantee**

7.1 The guarantee is governed by Swedish law.

7.2 Disputes regarding the guarantee shall be settled by arbitrators in accordance with current Swedish arbitration legislation at the time of the occurrence of the dispute.

The arbitration proceedings shall take place in Stockholm. The language used in the arbitration procedure shall be Swedish and the settlement shall be worded in Swedish.

In the event that the guarantee holder wishes to refer a decision made by EKN to arbitration, the guarantee holder shall make such reference within twelve months from receipt of the decision. The guarantee holder shall otherwise forfeit his right of action.

If the arbitrators arrive at different conclusions with regard to value, the mean value shall apply.